IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 30TH JULY 2007 / 8TH SRAVANA 1929

WA.No. 1858 of 2007

AGAINST THE JUDGEMENT IN WPC.20614/2007 Dated 16/07/2007
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APPELLANTS.RESPONDENTS 2 & 3:
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1. INDIAN BANK,
   REPRESENTED BY THE GENERAL MANAGER, CIRCLE OFFICE,
   P.B.NO.3575, 38/1672,CHITTOOR ROAD,PULLEPPADY ROAD
   ERNAKULAM.

2. THE AUTHORISED OFFICER,
   INDIAN BANK, THIRUVALLA BRANCH, THIRUVALLA P.O.

BY ADV. SRI.S.SREEKUMAR

RESPONDENTS/PETITIONER AND 1ST RESPONDENT:
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1. P.K. JAYAPRAKASH,
   PARUTHIKKATTIL HOUSE, ANJILITHANAM P.O.,
   MALLAPPALLY, KAVIYOOR, THIRUVALLA.

2. UNION OF INDIA,
   REPRESENTED BY ITS SECRETARY,MINISTRY OF FINANCE,
   DEPARTMENT OF BANKING, CENTRAL SECRETARIAT,
   NEW DELHI, PIN-110 001.

R2 BY ADV. SRI.P.PARAMESWARAN NAIR,ASST.SOLICITOR GENERAL

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 30/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

W.A.No.1858 of 2007

Dated, this the 30th day of July, 2007

JUDGMENT

H.L.Dattu, C.J.

This appeal is directed against the order passed by the learned Single Judge in W.P.(C) No.20614 of 2007 dated 16th July, 2007.

(2) The petitioner before the learned Single Judge had defaulted in paying the amounts due to the Bank. He had approached this Court several times and was able to get extension of time for payment of the amounts due to the Bank.

(3) When the Bank initiated further recovery proceedings against the petitioner, he once again approached this Court by filing the aforesaid writ petition. The Court, taking a very sympathetic view of the matter, has granted some relief to the petitioner to see that the petitioner is not dispossessed of the residential house which is in his possession. Before doing so, the Court has directed the petitioner to file an undertaking before the Court that he shall settle the liability on or before 15.10.2007. Such an undertaking is filed before the Court. The learned Single Judge has made a further observation that if for any reason the petitioner does not comply with the undertaking given by him before the Court, then the Bank would be at liberty to take possession of the residential house with the police help.

(4) Aggrieved by the aforesaid order passed by the learned Single Judge, the Bank is before us in this writ appeal. The Bank has raised five contentions in the grounds of appeal. Firstly, that the petitioner had filed several writ petitions and availed number of opportunities for discharging the

debt, but he did not care to pay a single paise; the extension granted is against the letter and spirit of the earlier orders passed by this Court; the attempt of the petitioner is to protract the recovery proceedings; the previous conduct of the petitioner does not deserve any sympathetic consideration, and lastly that under Article 226 of the Constitution this Court will not enter into contractual matters, especially when the liability is not under challenge.

(5) We are not going to entertain any one of these grounds raised by the appellants before us.

(6) Because of the financial constraints, a defaulter has failed to pay off the debts due to the Bank. He has only one house in which he is residing. He wants to save that house. Therefore, he had approached this Court on number of occasions and had taken several opportunities from this Court to pay the dues of the Bank, but had failed to pay the amounts due to the Bank. When further recovery proceedings are initiated by the Bank, he has approached this Court. The Court, as a last chance, that too after taking an undertaking from him, has given some breathing time to the petitioner to settle the amounts due to the Bank. This is done by the learned Single Judge by exercising his extra ordinary and discretionary jurisdiction under Article 226 of the Constitution. The powers so exercised by the learned Single Judge cannot be faulted by us. This Court is a Court of equities. If a person comes before this Court seeking some relief to save his immovable property rights, this Court cannot shut its eyes and throw out the petition only on the ground that the earlier orders passed by this Court have not been complied with by him. Once being a sinner, he will not continue to be a sinner for ever. He might have committed a sin earlier, but that does not mean to say that he will continue the

same sin for ever. Keeping all these aspects of the matter in view, the learned Single Judge has exercised his discretionary jurisdiction and has granted some breathing time to the petitioner to pay off the amounts due to the Bank. In our opinion, the order so passed by the learned Single Judge is neither arbitrary nor illegal and at any rate not in contravention of any statutory provisions nor the mandate of the Constitution. Therefore, the impugned order does not require our interference. Accordingly, the writ appeal requires to be rejected and it is rejected.

Ordered accordingly.

(**H.L.DATTU)**
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

vns/DK.